90-1 1331

FILED
NOV 28 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

EDWARD R. WYATT,

Petitioner,

v.

ROBIN S. THOMAS and
MICHAEL ANTHONY PROFFIT

Respondents.

PETITION FOR WRIT OF CERTIORARI
To the Circuit Court of Smyth County,
Virginia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether or not, the Fourteenth Amendment gives a party in interest the right to intervene and protect his interest.

2. Whether or not, the "sole" owner of a corporation has a right under the Fourteenth Amendent to protect his corporation.

3. Whether or not, the Fifth and Fourteenth Amendment gives citizens the right to terminate a counsel and represent their own interest.

4. Whether or not, the Due Process Clause of the Fourteenth Amendent requires a Judge to enter judgment against a party who is in default, or gives the Judge the right to drop a party who is in default, and add another party.

5. Whether or not, the Due Process Clause of the Fourteenth Amendment allows

a party in a civil suit to question witnesses to their bias and interest.

6. Whether or not the Fourteenth Amendment and Civil Rights 13.8 gives parties, and party representatives the right to conspire against the opposing party, introduce evidence that is known to be false, and for the sole purpose of degrading a witness.

7. Whether or not the Due Process Clause of the Fourteenth Amendment requires an insurance company to defend the insured in a civil suit.

8. Whether or not the Fourteenth Amendment permits the "sole" owner of a corporation to file an appeal on behalf of his corporation.

9. Whether or not, the Due Process Clause of the Fourteenth Amendment gives the Judge the right to dismiss a complaint against a defendant when the matter is in dispute, and grant motions on the same day

presented without giving the party against whom the motions were made time to defend.

10. Whether or not the due process clause of the Fourteenth Amendment allows the plaintiff equal access to insurance investigations.

11. Whether or not the judge should disqualify himself when there is a conflict of interest.

12. Whether or not 28 U.S.C. 1441 governs Uninsured Motorist Carriers.

LIST OF PARTIES

The parties to the proceedings below were the petitioner, Edward R. Wyatt, Wyatt Mining Equipment, Inc., and the respondents were Robin S. Thomas and Michael Anthony Proffit.

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October Term, 1990

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v.

ROBIN S. THOMAS and
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Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Circuit Court of Smyth
County, Virginia

Edward R. Wyatt, sole owner, president, registered agent, secretary, and treasurer of Wyatt Mining Equipment, Inc., hereby petition for a writ of certiorari to review the judgment of the Circuit Court of Smyth County, Virginia in this case.

OPINIONS BELOW

The Opinion of the Supreme Court of Virginia. (Appendix B).

The Opinions of the Circuit Court of Smyth County, Virginia. (Appendix C, D, E, F).

JURISDICTION

The judgment of the Supreme Court of Virginia. On October 22, 1990, the Chief Justice extended the time within to file a petition for a writ of certiorari to November 28, 1990. 42 U.S.C.A. ss1983. 28 U.S.C.ss1651. 28 U.S.C.ss1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Constitution provides in relevant part:

> "No person shall be deprived of life, liberty, or property, without due process of law."

2 . The Fourteenth Amendment to the United States Constitution provides in relevant part:

> "Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. Am. Jur. 2d. 15 Civil Rights:

> "The due process clause was intended in addition to other guaranties of private rights, to give increased security against orbitrary deprivation of life or liberty, or the arbitrary spoilation of property."

4. 18 U.S.C. ss242:

> "Is concerned only with deprivation of rights guaranteed by federal law or the Constitution."

5. Civil Right 13.8:

> "If ... two or more persons conspire for the purpose of impeding, hindering, obstructionary or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws,..."

6. 28 U.S.C. 1441:

"Uninsured Motorist Carrier."

7. Am. Jur. 2d:

"Effect of Certificate of title or name in which vehicle is registered."

8. 7A Am. Jur. 2d (Rev):

"Automobiles and Highway Traffic ssss 422-424."

9. 8 Am. Jur. 2d (Rev):

"Automobiles and Highway Traffic ss 1110."

STATEMENT OF THE CASE

The facts giving rise to the litigation can be summarized briefly. On October 31, 1987, at approximately 1:00 P.M. Edward R. Wyatt, "sole" owner, operator, president, registered agent, secretary, and treasurer of Wyatt Mining Equipment, Inc., which in no longer active, gave Ms. Thomas permission to drive a 1985 Lincoln Continental Automobile titled in the name of Wyatt

Mining Equipment Inc., and insured in the name of Edward R. Wyatt. Ms. Thomas was given permission to drive said vehicle to the Cato's Department Store in Marion, Virginia, where she was to carry on certain business and return the automobile to the residence of Mr. Wyatt.

Not with-standing her duty to safe-keep anothers property, Ms Thomas took the said automobile to another town and put it in possession of Mr. Proffit, who had no drivers license, and was drunk. At approximately 10:00 P.M., Mr. Proffit drove the said automobile and collided with two (2) other automobiles parked along the side of the highway and "total lossed" the 1987 Lincoln Continental

On November 2, 1987, Mr. Wyatt reported said accident to his insurance agent, AAA of Virginia, representing Allstate Insurance Company (Allstate), Mr. Wyatt's carrier, and filed a claim under

the Uninsured Mortorist provisions. Allstate declined coverage citing "38.1-381" of the Code of Virginia and stated that:

> "Mr Wyatt's vehicle does not qualify as an uninsured vehicle, the uninsured motorists provisions under his automobile policy do not apply".

On July 20, 1988 Motion For Judgment was filed in the Circuit Court of Smyth County, Virginia by Edward R. Wyatt demanding judgment against Robin S. Thomas and Michael Anthony Proffit, with service of process served upon Virginia Mutual Insurance Company (Va. Mut.), Ms. Thomas' carrier, and Allstate Insurance Company (Allstate), Mr. Wyatt's carrier. Mr. Howard C. McElroy, counsel for Allstate, and Mr. James N.L. Humphreys, counsel for Va. Mut. representing Ms. Thomas, "jointly" represented Ms. Thomas, Mr. Proffit, and Allstate.

On May 2, 1989, at the hearing on

the pleadings, all in the same Order entered on May 22, 1989, styled EDWARD R. WYATT, et at, Plaintiffs, v. ROBIN S. THOMAS, et al, Defendants, (Appendix F)

Judge Flannagan:

1. "Granted Edward R. Wyatt's Motion For Leave To Add Wyatt Mining Equipment, Inc. as a party Plaintiff (Appendix S).

2. "Granted Motion To Add Party Plaintiff, Wyatt Mining Equipment, Inc. (Appendix U).

3. "Dismissed with prejudice Edward R. Wyatt's claims against Ms. Thomas and Mr. Proffit, and required Wyatt Mining Equipment, Inc. to file a Motion For Judgment and gave Ms. Thomas, Mr. Proffit, and Allstate another twenty-one (21) days after its service to file responsive pleadings (Appendix F).

4. "Denied Motion For Default Judgment against Mr. Proffit, who had not filed responsive pleading (Appendix T, P) (M.T.S.A. pg. 8, ln. 13 - pg. 11, ln. 3) (Appeal err 1, arg. A.)"

5. "Granted Summary Judgment for Ms. Thomas, and Allstate (Appendix H, I, P) (Appeal err 2, arg. H.)"

Judge Flannagan's rulings were on

the grounds that Edward R. Wyatt had no interest in this matter and stated in the M.T.S.A. hearing, when he had required Edward R. Wyatt to be dropped (M.T.S.A. trn. pg. 40, lns. 12 - 14):

> "I think the record is clear that Mr. Proffit has not filed an answer, nor anyone on his behalf individually."

(M.T.S.A. trn. pg. 45 ln. 13-pg.46,ln 5):

> "Further, as was indicated, the, as filed, as the record will show, it is clear that the change in midstream from the claim of Ed Wyatt to Wyatt Mining Equipment, Incorporated, as Mr. McElroy has pointed out, the motion for default in the technical status of those pleadings create an unusual situation. With respect to Mr. Proffit, the law is also clear, I believe, that, I believe the case that comes to mind is one where a demurrer would have been sustainable and the court found that a default judgment was not appropriate where a demurrer was sustainable, and certaintly, the court had made the determination that "Mr. Wyatt, individually, had no claim for these damages", and it would not have been appropriate for Mr. Wyatt under those circumstances to have recovered a default

judgment against someone for damages for which it was clear he had no claim (Appendix F, G, H, I, P) (Appeal err 10, arg.J)".

At the beginning of the trial of September 20, 1989, Ms. Thomas presented and Judge Flannagan granted a Motion In Limine, "denying Wyatt Mining the right to question Nancy Smith, an agent of Allstate, to her interest and bias", and threatened a mistrial if any attempt was made to question said witness to her interest and bias (Appendix J, P, Q.)

Judge Flannagan refused to allow Wyatt Mining to present any evidence or exhibits, (Appendix M) other than pictures of the automobile, and sustained an objection that was never made when Wyatt Mining attempted to enter the odometer milage document from the dealer where said automobile was purchased (Trl. trn. pg. 72, ln. 18-pg. 73, ln. 15):

THE COURT: "Just a minute now. I

have sustained the objection to the document. I take it you are not asking the witness to state what that number is?"

MR. HUTTON: "I'm just going to ask that the document be introduced.

THE COURT: "All right. I have sustained the objection. It will be marked for identification only. The objection on the basic of hearsay is sustained (Appendix P) (M.T.S.A. err 3, pg. 12, ln. 5 - pg. 13, ln. 25) (Appeal err 9, arg. I)".

Over objection, Judge Flannagan allowed Ms. Thomas to mislead the jury by making false statements about Mr. Wyatt's driving record, that he had been recently convicted of DUI in this court and said conviction was on appeal to the Virginia Court of Appeals at this time (Appendix V) (Trl. trn. pg. 70, ln. 18 thru page 72, ln. 4) (Appeal err 8, arg. H).

After testimony of Mr. Wyatt, Ms. Thomas, and Mr. Proffit, Ms. Thomas made a Motion To Strike on the grounds that there was no evidence of Ms. Thomas'

negligent intrustment by turning the car over to Mr. Proffit. Wyatt Mining opposed on the grounds that there was sufficient evidence to put before the Jury. That it was obvious Mr. Wyatt had to rely on testimony because he was asleep when the automobile was taken and had to rely on what he was told (Appendix P, W) (pg.79, ln. 12-pg, 82, ln. 25) (M.T.S.A. pg. 14, ln. 5-pg. 16, ln. 12) (Appeal err 3, arg. C). Judge Flannagan granted said motion (Trl. trn. pg. 82, ln. 18 thru 25):

> "there's some evidence that Mr. Doan had the car and then Mr. Proffit had the car. There is no evidence that the defendant Thomas entrusted the car to Mr. Proffit. We have to "void" any evidence in that regard and the burden in this case is upon the plaintiff to prove that, in fact, Ms. Thomas entrusted the car to Mr. Proffit and that evidence is not there and I will sustain the motion to strike as to the defendant Thomas."

Mr. Proffit was then allowed to present his case even though he had not

yet filed a responsive, nor had anyone on his behalf. After allowing Ms. Nancy Smith to testify for Mr. Proffit, Judge called recess and asked Mr. Proffit to come to his chambers. After recess, Mr. Proffit read his argument from a letter which had been prepared. After the trial, Mr. Proffit told Mr. Wyatt that Judge Flannagan advised him:

> "Mr. Proffit, as you know, Mr. Wyatt didn't contribute to this accident in any way, but you must go out there and convince the jury that he did or Allstate will have to pay for the damages and they in turn will sue you and you will never own anything the rest of your life".

Allstate then prepare the statement which Mr. Proffit read to the jury (Appeal err 7, arg. G).

Instructions to the jury, prepared by Allstate, after dismissing Edward R. Wyatt on the grounds that he had no interest, and after striking the evidence of Wyatt Mining against Ms.

Thomas (Appendix N).

Wyatt Mining objected to said instructions on the grounds that there was no evidence to support contributory negligence instructions (Appendix P). Judge Flannagan stated that (Trl. trn. pg. 95, ln 16 thru 18):

> "The evidence certainly is conflicting, but I believe that's relevant for the Jury to resolve that conflict so it will be granted".

After Mr. Proffit was allowed to read the statement prepared by Judge Flannagan and Allstate (trl. tr. pg. 101, ln. 25, thru pg. 103, ln. 10), the jury was out only fifteen minutes before returning with a verdict of not guilty.

After filing M.T.S.A., Mr. Hutton, Wyatt Minings counsel, requested and was allowed to resign. Without funds for other counsel, Mr. Wyatt proceeded to represent Wyatt Mining. Upon receiving a copy of the trial transcript and finding

it to be radical, Wyatt Mining filed Subpoena Duces Tecum on Monica Cook, Court Reporter, for open-microphone tapes of the trial and of the deposition of Edward R. Wyatt of October 21, 1988. Other Subpoenas Duces Tecum were filed on Allstate, Virginia Farm Mutual, carrier of Mildred Holly, owner of a 1987 Ford Truck that was involved in said wreck, and State Farm Insurance Company, carrier of Ruth Silvers, owner of a 1987 Toyoto that was involved in said wreck, for production of said insurance companies investigation files. Mr. Humphreys, counsel for Va. Mut., representing Ms. Thomas, and Mr. McElroy, representing Mr. Proffit and Allstate, jointly filed Motions To Quash all said subpoena Duces Tecums (Appendix K, L, R).

At the hearing, Mr. Humphreys and Mr. McElroy, assisted by Christen W. Burkholder, of Woodward, Miles &

Flannagan, P.C., "who Judge Flannagan had been a pardner", jointly represented Virginia Farm Mutual, State Farm, Allstate, Farm Mutual, and Monica Cook. Mr. Wyatt alleged conspiracy, conflict of interest, unethical practice of law, and tampering with a trial transcript (Trn. pg. 7, ln. 13-pg. 21, ln. 15). Judge Flannagan's reply was only that (Trn. pg. 17, ln. 2-10):

> "They are strong allegations. And the Court has no desire, of course, to uphold anything that was obtained fraudulently, if those allegations can be shown. But neither is this the time, you know, for fishing expeditions. And (trn. pg. 21, ln. 17-20) I have a feeling there is probably another side to the story, too. I won't ask them for that other side at this moment, but I understand how these things work".

Judge Flannagan quashed all of the Subpoenas with the exception of the Subpoena for the Court Report Tapes, which he directed to be sealed and delivered to

the Clerk, where they would be held for safe keeping until further Order of the Court (Apendix D) stating that (Trn. pg. 17, ln 21-25)

> "The other Subpoenas Duces Tecum to Allstate, in the ordinary course of litigation, the Allstate investigatory files would not be something subject to discovery.

Tapes of the trial were produced and found to be radical (Appendix R). Tapes of Mr. Wyatt's deposition were never produced and were somehow covered up.

Mr. Wyatt, after having a nervous breakdown, was charged thirty-five hundred dollars ($3500.00), in advance, by attorney, Joe Bounds, to "assist" in arguing M.T.S.A. At said argument, Ms. Thomas, and Allstate jointly argued for Ms. Thomas, Mr. Proffit, and Allstate (Appendix C),

During the hearing, Mr. Wyatt, after realizing that he was being abandoned,

sold out by Mr. Bounds, Mr. Wyatt terminated Mr. Bounds, who refused to step aside, and attempted to represent his own interest, or rehire Mr. Hutton, who was present as a witness, but was refused by Judge Flannagan, who allowed Mr. Bounds to continue to abandon (M.T.S.A. trn. pg. 36, ln. 13-pg. 38, ln. 3):

> THE COURT: "If you do not have counsel, then in all candor, the corporation is the party that is here, not you as an individual. It is the corporation that is here, and you are not authorized to practice law on behalf of the corporation. So if your counsel wishes to call you to testify, I will permit him to do so; otherwise, on reflection, I am going to ask you to have a seat, please sir."
>
> MR. WYATT: "Well, Your Honor, I have got this paper I'd like for you to read here, it is in reference to that. I have been allowed to represent myself, Wyatt Mining, Incorporated, all along, but now I can see that my attorney has no intention of putting any testimony on. I see he has no intention of introducing the tapes that you ordered yourself to be heard in this court before you."

THE COURT: "Just a minute. This is a letter from your attorney. I, frankly, don't want to see it. That is between you and your attorney."

MR. WYATT: "And you yourself ordered in about two or three different orders that you personally asked me to come before you, you wanted to hear tapes which will prove perjury, and one of the grounds on this for retrial is perjury, and I am not, maybe I am using it awful freely, but there is proof right here that it happened and from talking to him, there's three witness that were summonsed and that the tapes that you personally ordered in writing and verbally are not intended to be used today for the purpose of, as I stated before, and I am not afraid to say it now, openly of conspiracy."

THE COURT: "All right, sir, if you will, have a seat seat now, please, sir. Let the court make the record clear that the question of "perjury" were previously brought up and the court did direct that the original tapes of the Court Reporter be kept in the Clerk's office for such use as may be appropriate. And, of course, as to what is appropriate is certainly counsel's call in that regard in pursuing any of these motions."

(M.T.S.A. trn. pg. 43, ln. 14-pg. 44, ln. 18):

MR. WYATT: "Your Honor, I'll speak to the letter I am referring to, it's nothing I wrote, it's what this lawyer wrote, I wish to advise the court--."

THE COURT: "Mr. Wyatt, just a moment, sir. Is that the letter from your attorney?"

MR. WYATT: "To assist in representation, to assist."

THE COURT: "All right. Well, Mr. Wyatt, it is clear that the president of a corporation or any individual is not authorized to represent the corporation."

MR. WYATT: "If it means anything, I object."

THE COURT: "I understand, sir. Your objection is noted."

MR. WYATT: "I object for Wyatt's Mining, Incorporated. I object to the whole proceeding."

THE COURT: "It is noted, and I am sure that the appellate court will be happy to consider whether the court was action properly."

(M.T.S.A. trn. pg 49, line 2 thru 14):

MR. WYATT: "I object for Wyatt Mining, Incorporated, as the president of Wyatt Mining, Incorporated. May I not appeal now?"

THE COURT: "You will need to talk

with your attorney regarding the proceedings."

MR. WYATT: "I don't have an attorney at this time."

THE COURT: "The court is not in position to give you legal advice, Mr. Wyatt."

MR. WYATT: "I don't have an attorney at this time."

THE COURT: "You do have an attorney at this time. Mr. Bounds is the attorney of record (Appeal err 10 arg. J)."

Mr. Hutton, Mr. Wyatt's former counsel, who had been subpoenaed to testify, attempted to address the Court (M.T.S.A. trn. pg. 43, line 3 thru 12):

MR. HUTTON: "Your Honor, I know this is unusual, but as an attorney and officer of this court, and the attorney representing Mr. Wyatt, one thing that I feel should be addressed, and it is very briefly, and I know it is unsual, and I will take it up with you in chambers."

THE COURT: "Well, it is, Mr. Hutton, and I am sorry, you are not counsel. I have opened the doors for comments and input from sources that, perhaps, the court should not have, and I am shutting the door (Appendix Q)."

Mr. Bounds abandoned err 4, after discovery evidence (M.T.S.A. trn. pg. 14, line 2 thru 4):

> MR. BOUNDS: "As to grounds number four, as counsel for the plaintiff at this hearing, I choose to abandon any arguments on that (Appendix P) (Appeal err 6, arg. F."

Mr. Bounds abandoned err 4 (M.T.S.A. err 7, trn. pg 21, line 5-10):

> MR. BOUNDS: "Your Honor, then there is number seven which is, basically, the catchall ground of that the evidence was contrary to the law, that the jury verdict was contrary to the law and the evidence in the case, and I can assure you that the Supreme Court doesn't do very well with that one when they--so I will abandon that (Appendix P) (Appeal err 10, arg. J)."

An order had already been prepared and was being circulated before Court had made rulings (M.T.S.A. trn. pg. 49, ln. 15 thru 21):

> THE COURT: "Mr. Mc. McElroy--. You do have an attorney at this time. Mr. Bounds is the attorney of record. I will ask if you will prepare an appropriate order."

MR. McELROY: "It is being circulated."

MR. HUMPHREYS: "We have an Order right here."

Said Order was entered on this day, January 16, 1990, in favor of both defendants, Thomas and Proffit. Judge Flannagan signed for Wyatt Mining as being objected to.

On January 30, 1990, Wyatt Mining Equipment Inc., by Edward R. Wyatt, filed Re Motion To Set Aside Verdict Or Award A New Trial, Notice that the M.T.S.A. transcript was filed, and a request that Judge Flannagan disqualify himself from above styled case. Said motion and request was denied by letter, dated January 31, 1990, by Judge Flannagen and in said letter he so stated that:

> "I do not anticipate the trial court taking any further action regarding this case unless otherwise directed by the appellate court."

Wyatt Mining Equipment Inc. by Edward R. Wyatt filed Notice of Appeal from said decree on February 13, 1990. On February 22, 1990, Objection To Transcript of the trial was filed on the grounds that it was radical, stating eighteen (18) most drastic discrepancies. On March 6, 1990 Mr. Wyatt received a letter from Judge Flannagan stating:

> "Gentlemen, I have received the recent correspondence regarding this matter. I remain of the opinion that Mr. Wyatt is not entitled to prepare and file pleadings on behalf of Wyatt Mining Equipment, Inc. See Rule 6.1-1 of the Rules of the Supreme Court of Virginia, 221 Va. 384 et seq. and particularly UPR 1-101(B) at p. 386."

On July 12, 1990, Edward R. Wyatt filed a complaint against Judge Flannagan, attorneys, and court reporters. On August 2, 1990, Mr. Wyatt received an Opinion from the Assistant Clerk of The Virginia Supreme Court that Wyatt Mining Equipment, Inc. v. Robin S. Thomas, et al had been

refused. That there was no reversible error. Although Mr. Wyatt requested oral argument by telephone, he was not allowed to do so, nor was he notified that his appeal was being argued. On August 2, 1990, Mr. Wyatt telephoned the Clerk, and the office of the Chief Justice and was told by both offices that Court was not in session on July 31, 1990.

REASONS FOR GRANTING THE PETITION

This case presents important questions of public interest that should be answered by this Court. The Court, and Officers of The Court are bound by Laws, Codes, and Rules that they have given oath to abide by. To abuse these, and the Constitutional Rights are against all Accepted Norms of Social Conduct.

The Courts ruling that the "sole" owner of a corporation is not a party in

interest, and has no right to defend when it is being taken by "misconduct" is contrary to the Law and the Constitution of The United States. The Fifth Amendment guarantees that "nor be deprived of life, liberty, or property without due process of law."

7 Am Jur 2d ss57. In support of a holding that a misrepresentation was immaterial, it has been asserted that the right of the named insured to recover on a policy of automobile liability insurance stems from his ownership of the car, but from the fact that he has been legally charged with an obligation for which he is liable. "Mid-States Ins. Co. v. Brandon, 340 III App. 470, 92 NE 2d 540; Hunt v. Century Indem. Co., 58 RI 336, 192 A799, 112 ALR 902".

16 A Am Jur 2d ss583. What is property, generally - The word "property" in the Fourteenth Amendment embraces all

valuable interests which a man may possess outside of himself - outside of his life and liberty. It is more than the mere thing which a person owns; it includes the right to acquire, use, and dispose of it, and the Constitution protects these essential attributes. It relates not only to those tangible things of which one may be the owner, but to everything which he may have an exchangable value.

The Fourteenth Amendment guarantees that "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

American Jurisprudence 2d. 15 Civil Rights: The due process clause was intended in addition to other guaranties of private rights, to give increased security against orbitrary deprivation of life or liberty, or the arbitrary

spoilation of property.

Section 242 of 18 U.S.C.S. is concerned with deprivation of rights guaranteed by federal law or the Constitution. United States v. O'Dell (CA6 Tenn) 462 F2d 224.

For the Court to allow all parties, and parties with interest in this action to "join against" was in violation of the due process clause of the Fourteenth Amendment. Conflict of Interest[s]: "A situation in which regard for one duty leads to disregard of another" 463 F. 2d 600, 602, or might be reasonably be expected to do so.

Civil Right 13.8 - Conspiracy - If ... two or more persons conspire for the purpose of impeding, hindering, obstructionary or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the

laws,...C.A. Va. 1977. A conspiracy may be demonstrated by circumstantial evidence alone. Joyner v. U.S., 547 F.2d 1199. C.A.Va. 1970. Where conspiracy has been found, act of one conspirator becomes act of other, present or about, if performed in furtherance of domination. U.S. v. McGowan, 423 F.2d 413. C.A.Va. 1968. Each member of conspiracy is chargeable with acts performed by other members in furtherance of conspiracy. C.A.Va. 1977. Once a conspiracy is established, it is presumed to continue until its termination is affirmatively shown. Joyner v. U.S., 547 F.2d 1199.

There is no constitutional principle that prohibits a court from protecting the entegrity of its processes of forbiding lawyers to intentionally creat grave due process problems by statements and comments concerning pending litigation. Constitutional Law restricts

lawyers comments about pending litigation where the comments to these instances pose a serious and imminent threat to a fair trial.

American Jurisprudence 2d - Automobile Insurance - ss 58. Effect of Certificate of title or name in which vehicle is registered. Although the motor vehicle is registered or a certificate of title thereto has been taken, in the name of one other than the insured, it has been held in a number of cases that the insured may nevertheless, under a sole and unconditional ownership clause in an automobile property insurance policy, be deemed to be such an owner, if such is the fact. In the case of liability insurance, a title certificate has been held not conclusive evidence of ownership, so that the sole ownership provision of the policy was not violated where the insured was the sole owner but title was taken in the name

of an employee as a matter of convenience.

Annotation: 71 ALR 2d 271 ss 3(b). United States Casualty Co. v. Bain, 191 Va. 717, 62 SE2d 814. Kietlinski v. Interstate Transport Liners, 3 Wis 2d 451 88 NW 2d 739, the court characterizing the managers interest as at most an equitable interest and stating that since the vehicle were registered in the name of the coporation a presumption was created that it was the owner and that such presumption had not been rebutted by the insuured.

Contributory negligence. 7A Am Jur 2d (Rev) Automobiles and Highway Traffic ssss 422-424. Instruction as to negligence of plaintiff. 8 Am Jur 2d (Rev) Automobiles and Highway Traffic ss 1110. Form 1612 Matter of defense. It is not necessary for plaintiff to prove that ----------(he or she) was not guilty of contributory negligence. Contributory

negligence is a matter for the defense to prove.

Writ of habeas corpus would be issued together with certiorori to clerk of circuit court to certify record by which cause of commitment could be examined. Ex Parte Burford (1806) 7 US 448, 2 L Ed 495. Supreme Court would grant certiorori where diminition of record was shown. Clark v. Hackell (1862) 66 US 77, 17 L Ed 69. Certiorori would issue for omissions in record. Sterns v. United States (1866) 71 US 1, 18 L Ed 451.

An aggrieved party is on who has been injured, who has suffered a loss; "a party or person is aggrieved by a judgment, order, or decree whenever it operates prejudicially and directly upon his property, pecuuiary, or personal rights." 223 S.W. 2d 841, 845.

16 A Am Jur. 2d, ss 583. The word "property" in the Fourteenth

Amendment embraces all valuable interest which a man may posses outside of himself - outside of his life and liberty. It is more than the mere thing which a person owns; it includes the right to acquire, use, and dispose of it, and the Constitution protects these essential attributes. Section 242 of 18 U.S.C.S. is concerned with deprivation of rights guaranteed by federal law or the Constitution. United States v. O'Dell (CA 6 Tenn) 462 F 2d 224.

That relationship with a person or thing that will support the issuance of an insurance policy. "A person is usually regarded as having an insurable interest in the subject matter insured when he will derive pecuniary benefit or advantage from its preservation, or will suffer pecuniary loss or damage from its destruction..." "255 S.W. 2d 990, 991. Ownership or other possessory interest is not necessary, 54

So. 2d 764; so long as there is a reasonable expection of pecuniary advantage. 15 P. 2d 483.

American Jurisprudence ss 58.

Although the motor vehicle is registered or a certificate of title thereto has been taken, it has been held in a number of cases that the insured may nevertheless, under a sole and unconditional ownership clause in an automobile property insurance policy, be deemed to be such an owner, if such is the fact. In the case of liability ipsurance, a title certificate has been held not conclusive evidence of ownership.

Uninsured mctorist carrier is not a party defendant within 28 U.S.C. ss 1441, the federal removal statute, in the initial action based on the automobile accident. (Zurenda v. Holloman, 616 F. Supp. 212 C.E.D. Va. 1985).

7 AM. Jur. 2d. ss 57. In support

of a holding that a misrepresentation was immaterial, it has been asserted that the right of the named insured to recover on a policy of automobile insurance stems from his ownership of the car, but from the fact that he has been legally charged with an obligation for which he is liable. Mid-States Ins. Co. v. Brandon, 340 III App 470, 92 NE 2d 540; Hunt v. Century Indem. Co., 58 RI 336, 192 A799, 112 ALR 902.

7 Am. Jur. 2d ss 389. Under the provisions of the usual or standard automobile liability insurance policies, the insurer, in line with its right to settle claims against the insured which are within the coverage of the policy and its right under the policy to the exclusive control over litigation against the insured, ss 381 et seg., Supra, is bound by the provisions of the policy issued by it to defend the "insured"

against all actions brought against him which are, judging by the allegations in such actions, ssss 391, 392, Infra, within the coverage of the policy, even if any of the allegations of the suit are groundless, false, or fraudulent. Sims v. Illinois Nat. Casualty Co. 43 Ill. App. 21 184, 193 N.E. 2d 123.

An automobile liability insurer has an obligation to defend regardless of the merit of the claim, where the policy contains an exclusive control of defense provision. Cook V. Ohio Casualty Ins. Co. (Tex Civ. App 6th Dist) 418 SW 2d 712.

Am Jur 2d ss 396. 68. An automobile liability insurer's duty to defend is determined from the allegations on the complaint and not on the facts ultimately established in the injury action. Burton v. State Farm Mut. Auto. Ins. Co. (CA5 Fla) 335 F 2d 317.

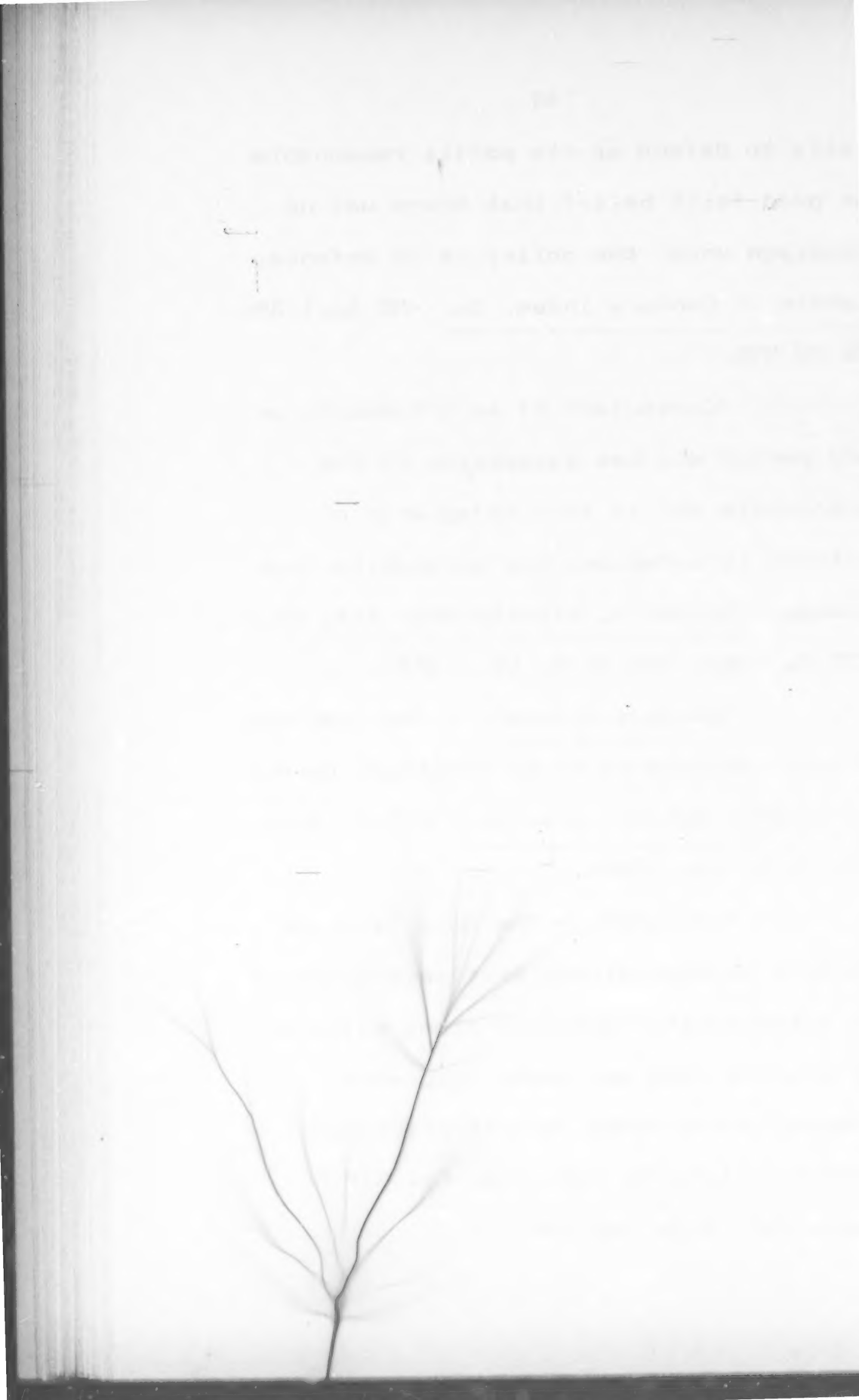
An automobile liability insurer

fails to defend at its peril; reasonable or good faith belief that there was no coverage under the policy is no defense. Landie v. Century Indem. Co. (MO App) 390 SW 2d 558.

"Custodian" of an automobile is any person who has possession of the automobile who in fact safeguards or intends to safeguard the automobile from damage. Gordon v. Liberty Mut. Ins. Co., 675 F. Supp. 321 (E.D. Va. 1987).

"Omnibus Clause". - The "omnibus clause" statute is to be construed Gordon v. Liberty Mutual. Ins. Co., 675 F. Supp. 321 (E.D. Va. 1987).

"Include". - The word "include" in this section allows that permission of an automobile's custodian alone suffices to provide coverage under insurance company's non-owned vehicle provision. Gordon v. Liberty Mut. Ins. Co. 675 F. Supp. 321 (E.D. Va. 1987).



It does not make the owner of an automobile liable for the negligence of another simply because such negligent party was operating the car with his permission. Lumbermens Mut. Cas. Co. v. Indemnity Ins. Co. of N. Am., 186 Va. 204, 42 S.E.2d 298 (1947).

Beneficiary Is Anyone Injured. - In Virginia anyone injured by the negligence of the insured under the policy is a beneficiary of the policy. Davis v. National Grange Ins. Co., 281 F. Supp. 998 (E.D. Va. 1968).

The Issue Under This Section Is Not One Of Agency But One Of Permission - a pointedly different thing. When an owner entrusts his vehicle to another, to use for the bailee's own purposes, the owner is not liable for the bailee's negligence, because there is no relation of agency between them. The bailee, however, is covered under the omnibus clause of the

insurance policy because it does not require the existence of an agency, but merely that the bailee shall have acted with the permission of the insured owner. Utica Mut. Ins. Co. v. Rollason, 246 F.2d 105 (4th Cir. 1957).

The Permission "expressed Or implied". - Permission to do a specific thing in not permission to do all things. Sordelett v. Mercer, 185 Va. 823, 40 S.E. 2d 289 (1946); State Farm Mut. Auto. Ins. Co. v. Cook, 186 Va. 658, 43 S.E. 2d 863 (1947); liberty Mut. Ins. Co. v. Tiller, 189 Va. 544, 53 S.E. 2d 814 (1949); etc.

The burden of proof is on the party alleging express or implied permission given by a named insured for another driver to operate an automobile. Liberty Mut. Ins. Co. v. Mueller, 432 F. Supp. 325 (W.D. Va. 1977), aff'd, 570 F. 2d 508 (4th Cir. 1978).

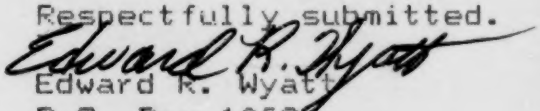
Issue Of Implied Permission For

Jury. Where a bailor gives express permission to a bailee, within a social context, to operate an automoblle, and does not give specific limiting instructions, the jury is empowered to decide whether, under all the circumstances, the bailee also has implied permission to use the automobile for a personal errand or other social purposes not utterly inconsistent with the purposes of the bailor. Emick v. Dairyland Ins. Co., 519 F.2d 1317 (4th Cir. 1975).

CONCLUSION

The petition for a writ of certiorari should be granted for the benefit of public interest.

Respectfully submitted.



Edward R. Wyatt
P.O. Box 1062
Marion, Va. 24354

DATED: November 26, 1990

APPENDIX A

SUPREME COURT OF THE UNITED STATES

No. A-295

Wyatt Mining Equipment, Inc.,

Petitioner

v.

Robin S. Thomas, et al.

O R D E R

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including November 28, 1990.

/s/ William H. Rehnquist

Chief Justice of the United States

Dated this 22nd day of October, 1990.

APPENDIX B

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 31st day of July, 1990.

Wyatt Mining Equipment, Inc.,

Appellant,

against Record No. 900444

Circuit Court No. L-1840

Robin S. Thomas, et al.,

Appellees.

From the Circuit Court of Smyth County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

David B. Beach, Clerk

/s/ A Ossi

By: _____
Deputy Clerk

APPENDIX C

TRANSCRIBED M.T.S.A. HEARING OF JANUARY 16, 1990

Opinion & Order

VIRGINIA:

IN THE CIRCUIT COURT OF SMYTH COUNTY

WYATT MINING EQUIPMENT, INC.,

Plaintiffs,

VS.

ROBIN S. THOMAS, ET AL.,

Defendants.

APPEARANCES:

JOSEPH P. BOUNDS, ESQUIRE
Suite 710, Dominion Bank Building
Roanoke, Virginia 24011,

Counsel for Plaintiffs.

JAMES N. L. HUMPHREYS, ESQUIRE,
Abingdon, Virginia,
AND HOWARD C. McELROY, ESQUIRE,
Abingdon, Virginia,

Counsel for Defendants.

THE COURT: All right, in the matter of Wyatt Mining Equipment,

Incorporated, v. Robin Thomas and Michael Proffit, we are here on motions to set aside the verdict of the jury in this case, the jury that was scheduled, let's see, that was conducted September 20, 1989.

THE COURT: All right, with respect to the motion to set aside the verdict, the court is going to deny the motion. The default judgment ground, frankly, is the one that is of most concern to the court, and I recognize argument to be made on behalf of the plaintiff in this proceeding, and recognize that it has some appeal; however, the court denies the motion on that ground.

I believe the statutory provision, 38.2-2206, as I recall, gives the uninsured motorist carrier the right to defend a proceeding against an uninsured motorist carrier in its own

name.

The law is clear that if a judgment goes down against an uninsured motorist, then, contractually, the uninsured motorist carrier is responsible for the amount of that judgment if it is inconsistent and inconceivable in the mind of the court that such a statutory scheme would permit the defense by the uninsured motorist carrier and a judgment against the uninsured motorist.

Further, as was indicated, the, as filed, as the record will show, it is clear that the change in midstreme from the claim of Ed Wyatt to Wyatt Mining Equipment, Incorporated, as "Mr. McElroy" has pointed out, the motion for default in the technical status of those pleadings create an unusual situation.

With respect to Mr. Proffit, the law is also clear, I believe, that, I believe the case that comes to mind is one

where a demurrer would have been sustainable and the court found that a default judgment was not appropriate where a demurrer was sustainable, and certaintly, the court had made the determination that Mr. Wyatt, individually, had no claim for these damages, and it would not have been appropriate for Mr. Wyatt under those circumstances to have recovered a default judgment against someone for damages for which it was clear he had no claim.

With respect to the motion in limine that is referred to in ground number two to restrict the cross examination, the court will certify for the record that the motion was made and the matter discussed in chambers. There was some discussion about, perhaps, indentifying this witness as an accident investigator or something of that nature, short of identifying her with an insurance

carrier. I don't believe that that was done, in fact, and no one was obligated to do so. The court feels it was correct in the ruling at that time.

Ground number three, the DMV record or the, I don't recall if it was a DMV -- Exhibit No. 4 for identification -- odometer mileage statement it is called, it is apparent to the court now and at the day of trial that this is a Xerox copy of something called an odometer and mileage statement.

It is not certified by any, by anyone, whether an official of a government agency or anyone else, simply a Xerox copy of an odometer and mileage statement.

The court was then and is now of the opinion that a foundation had not been laid to admit that as an exhibit in evidence.

With respect to ground number

five, that is, the negligent entrustment, the court was then and is now of the opinion that there simply is not evidence of entrustment to Michael Proffitt of this vehicle by Robin Thomas.

There simply is no evidence. The burden is upon the plaintiff to show that.

With respect to number six, ground number six, contributory negligence and assumption of the risk instructions, of course, on the one hand the plaintiff is alleging negligent entrustment on the part of Robin Thomas, and on the other hand is indicating that, Robin Thomas could be guilty of negligent entrustment, that is not an appropriate theory for the defendants -- for the plaintiff -- and, in fact, while the court may have resolved these issues somewhat differently, the court was of the opinion that there was an evidence that Mr. Wyatt knew of the condition of Michael Proffit and knew of

his propensity to, with respect to driving, and had no desire, as expressed by Mr.Wyatt, for that to happen, and yet, in view of the evidence of his knowledge of that and evidence, it was not a question of whether the court accepts it; it is a question whether the factfinder accepts that evidence, evidence that he knew or should have known that that would lead just to the situation that occurred, that is, an accident and damages resulting.

I am of the opinion that under the record as a whole, it was for the factfinder to determine whether or not the plaintiff would be barred from recovery on those grounds, and whether or not Mr. Wyatt understands or wishes to accept the fact, a jury of seven persons heard his evidence and heard the evidence of other witness and not the court and not the attorneys but a jury of seven persons made

their decision that Wyatt Mining was not entitled to recover in this case.

As far as this court is concerned, I believe that that was within the bounds of their discretion to make that decision. They made that decision.

I find no reversible error in that decision and will deny the motion to set aside.

And I take no personal offense if Wyatt Mining wishes for this matter to be review by the Supreme Court of Virginia, and I say that in response to the statements made by Mr. Wyatt here today and otherwise.

So there is a place for this to be reviewed, and if he feels he has been devied justice, then that is where it should be reviewed.

VIRGINIA:

IN THE CIRCUIT COURT OF SMYTH COUNTY

WYATT MINING EQUIPMENT, INC.,	)	
Plaintiff,	)	AT LAW
v.	)	Law No.: 1840
ROBIN S. THOMAS, et al,	)	
Defendants.	)	

FINAL ORDER

On this day, this case was brought before the court, pursuant to notice, for entry of final order.

By an order deted October 10, 1989, the court granted summary judgment in favor of defendant Thomas, and granted judgment in favor of defendant Proffit pursuant to the jury's verdict.

Plaintiff filed post-trial motions and such motions were argued at a hearing on January 16, 1990.

The court is of opinion that the post-trial motions should be denied.

Accordingly, the court ORDERS that this action will be, and is hereby, dismissed with prejudice as to all the parties and issues in controversy.

The clerk is directed to send an attested copy hereof to counsel of record, to Michael Anthony Proffit, and to plaintiff.

ENTERED this 16th day of January, 1989.

/s/ Charles B Flannagan

Judge

REQUESTED:

PENN, STUART, ESKRIDGE & JONES
P.O. Box 2288
Abingdon, VA 24210

By: /s/ James N. L. Humphreys

Counsel for Robin S. Thomas

WHITE, ELLIOT & BUNDY
P.O. B429
Abingdon, VA 24210

By: /s/ Howard C. McElroy

Counsel for Allstate Insurance Company

MICHAEL ANTHONY PROFFIT
c/o Nellie Davidson
Greenhill Subdivision
Chilhowie, VA 24319

/s/ Michael Anthony Proffit

SEEN AND OBJECTED TO:

WYATT MINING EQUIPMENT, INC.
P.O. Box 1062
Marion, VA 24354

Unsigned

By: _____
EDWARD R. WYATT, President

BOUNDS & DORSEY
Suite 710
Dominion Bank Building
Roanoke, VA 24011

By: /s/ Joseph P. Bounds

Counsel for Wyatt Mining
Equipment, Inc.